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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/772,118	02/04/2004	Frank H. Speckhart	28540.00	4291
22465	7590	08/23/2006	EXAMINER	
PITTS AND BRITTIAN P C P O BOX 51295 KNOXVILLE, TN 37950-1295				ILAN, RUTH
ART UNIT		PAPER NUMBER		
		3616		

DATE MAILED: 08/23/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/772,118	SPECKHART ET AL.
	Examiner	Art Unit
	Ruth Ilan	3616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 12 June 2006.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-41 is/are pending in the application.
- 4a) Of the above claim(s) 7,17,19-23,26,33 and 40 is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-6,8-16,18,24,25,27-32,34-39 and 41 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 04 February 2004 is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ . |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>2/4/04</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ . |

DETAILED ACTION

Election/Restrictions

1. Applicant's election with traverse of Species II in the reply filed on 6/12/06 is acknowledged. The traversal is on the ground(s) that the Examiner has not given any reasons why the different species are distinct. Additionally, the Applicant is stating that the different independent claims are "merely different definitions of a single invention and not patentably distinct species" and further goes on to quote MPEP 806.03 (2005) "*Where the claims of an application define the same essential characteristics of a single disclosed embodiment of an invention, restriction therebetween should never be required. This is because the claims are *>not directed to distinct inventions; rather they are< different definitions of the same disclosed subject matter, varying in breadth or scope of definition.*" Further on the bottom of page 15 of the response, the Applicant states that the claims have common subject matter and vary only in scope and/or breadth, there is not a serious burden.

With regards to the first issue, the Examiner apologizes for not providing the particular details of each species that make it distinct from the others. These details appear apparent from the drawings and the specification. Each of the drawings show either different types of arrangements, or very different sensors, see for instance Figure 4 when compared with Figure 5. Regarding the second issue, the Examiner respectfully disagrees with the Applicants assertion that the various groups of claims are directed to the same embodiment. The claims are definitely not directed to a single disclosed embodiment, some are directed to rotary embodiments, others to wiper and shuttle

embodiments. As an example, the subject matter of claims 19-23 is not found in the embodiments of Figures 3 and 4. It is noted that the Applicants disclosure even recognizes that these are different embodiments, because the description of each of the Figures describes them as different embodiments. As stated in MPEP 806.04, Where an application includes claims directed to different embodiments or species that could fall within the scope of a generic claim, restriction between the species may be proper if the species are independent or distinct. There is no disclosure of a relationship between the species, for instance they are not subcombinations useable together, and at first blush, there appears to be patentable differences between the various types of potentiometer sensors. It is noted, that regarding the issue of serious burden, a search for a rotary potentiometer falls into many subclasses of 338 that are different from the linear potentiometer. Further regarding the issue of serious burden, the examination of more than one invention constitutes a serious burden. Finally, the Examiner would like to remind the Applicant of the direction provided in the request for restriction: Should applicant traverse on the ground that the inventions or species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions or species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C.103(a) of the other invention. The applicant has stated, in paragraph 3 of page 14, that the Claims are merely different definitions of a single invention and not patentably distinct species. The Examiner reminds the Applicant that claims are not

species, however asks for clarification. Is the Applicant stating for the record that the various disclosed embodiments are not patentably distinct?

For the various reasons given above, the requirement is still deemed proper and is therefore made FINAL.

2. Claims 7, 17, 19-23, 26, 33 and 40 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim.

Claim Objections

3. Claim 28 objected to because of the following informalities: Claim 28 ends in a comma instead of a period. Appropriate correction is required.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 1-6, 8-10, 11-16, 18, 25, 32, and 35-39 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Each of these claims includes the limitation " a first electrical connection to said wiper". A review of the specification does not provide clarity as to what connection is intended to be the electrical connection to the wiper.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 24, 27, 28, 29-31 and 41 are rejected under 35 U.S.C. 102(b) as being anticipated by Langford et al. (US 6,015,163.) Langford et al teaches a seat having a plurality of zones on a sitting portion and including a plurality of sensors (115) actuated by a plurality of first members (105, see col. 3, lines 15-30) that are responsive to deflection of the seating portions. Langford et al. also teaches a processor (45) and an occupant restraint (46) controlled by the processor.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

9. Claims 1-5, 8-15, 18, 24, 25, 27, 28, 29, 31, 32, 34-38, and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Enomoto et al. (US 6,849,808 B2) in view of Schousek (US 5,474,327.) Enomoto et al. teaches a seat weight sensor system that includes a seat including a plurality of zones (see for instance Figure 3) and further each zone including a first sensor with a first member (71) a connecting member (70) attached to the first member and a potentiometer with a shuttle (42) and a wiper (101) and resistive member (52 or 53.) Also included are at least first and second electrical connections (57, 58, 59) which can reasonably be interpreted to come from either the wiper or the resistive member. Additionally, Enomoto et al. teaches other embodiments

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(see Figure 44, 59) that teach a shuttle (100) a connecting member (33) and a first member (33.) and also includes a spring (36) forcing the shuttle to a neutral position. A potentiometer body (402) is attached to the seat. In the embodiment shown in Figure 44, the shuttle moves linearly. Enomoto et al. fails to teach that the derived weight is used to control an airbag. Schousek teaches using the weight determined from a seat weight sensor to control an airbag. Such control is well known to be useful to protect occupants that are below a certain weight from being injured during airbag deployment. It would have been obvious to one having ordinary skill in the art at the time of the invention to use the weight derived to control an air bag, in order to protect occupants of various sizes appropriately.

Allowable Subject Matter

10. Claims 6, 16, and 39 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Ohara et al teaches a variable resistor of interest. Schoos et al. teaches a variable resistor seating sensor of interest.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ruth Ilan whose telephone number is 571-272-6673. The examiner can normally be reached on Monday-Friday, 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul Dickson can be reached on 571-272-6669. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Ruth Ilan
Primary Examiner
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